



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2021-0621; FRL-9085-01-R6]

Air Plan Approval; Oklahoma; Updates to the General SIP and Incorporation by

Reference Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve identified portions of two revisions to the Oklahoma State Implementation Plan (SIP) submitted by the State of Oklahoma designee on May 15, 2020, and February 9, 2021. This action addresses the revisions submitted to the Oklahoma SIP pertaining to the general SIP definitions and the incorporation by reference of Federal requirements under Oklahoma Administrative Code (OAC).

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2021-0621, at <https://www.regulations.gov> or via email to wiley.adina@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional

submission methods, please contact Adina Wiley, (214) 665-2115, wiley.adina@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley, EPA Region 6 Office, Air Permits Section, 214-665-2115, wiley.adina@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via <https://www.regulations.gov>, as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that air quality meets the EPA’s National Ambient Air Quality Standards (NAAQS). These ambient standards are established under section 109 of the Act and they currently address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. The state’s air regulations are contained in its SIP, which is basically a clean air plan. Each state is responsible for developing SIPs to demonstrate how the NAAQS will be achieved, maintained, and enforced. The SIP must be submitted to the EPA for

approval, and any changes a state makes to the approved SIP also must be submitted to the EPA for approval.

On December May 15, 2020, Mr. Kenneth Wagner, Secretary of Energy and Environment, submitted revisions to the Oklahoma SIP that included the annual SIP updates for 2019. The submittal included revisions to OAC 252:100, Subchapter 2 and Appendix Q to update the incorporation by reference of Federal requirements, which will be addressed in this proposal. The submittal also included revisions to OAC 252:100, Subchapter 39, to revise the regulations for control of volatile organic compounds (VOCs) in nonattainment areas and former nonattainment areas. The EPA has determined that the May 15, 2020, submitted revisions to OAC 252:100, Subchapter 39 will be addressed in a separate rulemaking.¹

On February 9, 2021, Mr. Wagner, Secretary of Energy and Environment, submitted revisions to the Oklahoma SIP that included the annual SIP updates for 2020. The submittal included revisions to OAC 252:100, Subchapter 1 to update the definitions for the Oklahoma SIP and revisions to OAC 252:100, Subchapter 2 and Appendix Q to update the incorporation by reference of Federal requirements. This proposal will address the submitted revisions to OAC 252:100-1-3, Subchapter 2 and Appendix Q. We have determined that the revisions to the statutory definitions at OAC 252:100-1-2 should be reviewed in a separate action. The submittal also included revisions to OAC 252:100, Subchapter 13, to revise the open burning regulations; Subchapters, 37, 39, and Appendix N to revise the regulations for control of VOC emissions in nonattainment areas and former nonattainment areas from aerospace industries coating operations; and revisions to Subchapters 39-49 to revise the regulations for the control of VOC emissions in nonattainment areas and former nonattainment areas from manufacturing of fiberglass reinforced plastic products. The EPA has determined that the February 9, 2021,

¹ The EPA's action on the revisions to OAC 252:100, Subchapter 39 can be found at www.regulations.gov, Docket No. EPA-R06-OAR-2020-0437.

submitted revisions to OAC 252:100, Subchapters 13, 37, 39-49, and Appendix N will be addressed in a separate rulemaking action.

II. The EPA's Evaluation

The accompanying Technical Support Document for this action includes a detailed analysis of the submitted revisions to the Oklahoma SIP which are the subject of this proposed rulemaking. Our analysis indicates that the May 15, 2020, and the February 9, 2021, SIP revisions addressed in this proposed rulemaking action were developed in accordance with the CAA and the State provided reasonable notice and public hearing.

Updates to the Oklahoma SIP Definitions

The general SIP provisions of OAC 252:100, Subchapter 1, incorporate statutory definitions at OAC 252:100-1-2 and general definitions at OAC 252:100-1-3. On February 9, 2021, the ODEQ submitted revisions to OAC 252:100-1-2 and OAC 252:100-1-3 adopted on June 25, 2020, effective September 15, 2020. The EPA is only addressing the submitted revisions to OAC 252:100-1-3 at this time.

The revisions to OAC 252:100-1-3, update the definitions used throughout the Oklahoma SIP. The revisions to the definitions of “Best available control technology” and “responsible official” and the new definition for “Title V permit” are consistent with the underlying federal requirements.

Updates to the Oklahoma SIP Incorporation by Reference Provisions

The ODEQ submitted revisions on May 15, 2020 and February 9, 2021, to update the Incorporation by Reference provisions found in the Oklahoma SIP. These revisions ensure the Oklahoma SIP maintains consistency with current federal requirements.

On May 15, 2020, the ODEQ submitted revisions to OAC 252:100-2-3 and Appendix Q that were adopted on May 28, 2019 and effective September 15, 2019. These revisions updated the incorporation by reference date in the opening paragraph of OAC 252:100-2-3 and revoked and replaced the previous version of OAC 252, Chapter 100, Appendix Q.

On February 9, 2021, the ODEQ submitted another set of revisions to OAC 252:100-2-3 and Appendix Q that were adopted on June 25, 2020, and effective September 15, 2020. The February 9, 2021, revisions updated the opening paragraph of OAC 252:100-2-3 to include the current incorporation by reference date and revoked and replaced the prior version of Appendix Q that was submitted on May 15, 2020.

III. Impact on Areas of Indian Country

Following the U.S. Supreme Court decision in *McGirt v Oklahoma*, 140 S. Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Pub. Law 109-59, 119 Stat. 1144, 1937 (August 10, 2005) ("SAFETEA"), to administer in certain areas of Indian country (as defined at 18 U.S.C. § 1151) the State's environmental regulatory programs that were previously approved by the EPA for areas outside of Indian country. The State's request excluded certain areas of Indian country further described below. In addition, the State only sought approval to the extent that such approval is necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014).²

On October 1, 2020, the EPA approved Oklahoma's SAFETEA request to administer all the State's EPA-approved environmental regulatory programs, including the Oklahoma SIP, in the requested areas of Indian country. As requested by Oklahoma, the EPA's approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. § 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such

² In *ODEQ v. EPA*, the D.C. Circuit held that under the CAA, a state has the authority to implement a SIP in non-reservation areas of Indian country in the state, where there has been no demonstration of tribal jurisdiction. Under the D.C. Circuit's decision, the CAA does not provide authority to states to implement SIPs in Indian reservations. *ODEQ* did not, however, substantively address the separate authority in Indian country provided specifically to Oklahoma under SAFETEA. That separate authority was not invoked until the State submitted its request under SAFETEA, and was not approved until EPA's decision, described in this section, on October 1, 2020.

land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively “excluded Indian country lands”).

EPA’s approval under SAFETEA expressly provided that to the extent EPA’s prior approvals of Oklahoma’s environmental programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA’s approval of Oklahoma’s SAFETEA request.³ The approval also provided that future revisions or amendments to Oklahoma’s approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).

The EPA is proposing to approve revisions to the general definitions used in the Oklahoma SIP as well as updates to the incorporation by reference provisions to maintain consistency with federal requirements, which will apply statewide in Oklahoma. Consistent with the D.C. Circuit’s decision in *ODEQ v. EPA* and with EPA’s October 1, 2020 SAFETEA approval, if this approval is finalized as proposed, these SIP revisions will apply to all Indian country within the State of Oklahoma, other than the excluded Indian country lands, as described above. Because – per the State’s request under SAFETEA – EPA’s October 1, 2020 approval does not displace any SIP authority previously exercised by the State under the CAA as interpreted in *ODEQ v. EPA*, the SIP will also apply to any Indian allotments or dependent Indian communities located outside of an Indian reservation over which there has been no demonstration of tribal authority.⁴

³ EPA’s prior approvals relating to Oklahoma’s SIP frequently noted that the SIP was not approved to apply in areas of Indian country (consistent with the D.C. Circuit’s decision in *ODEQ v. EPA*) located in the state. *See, e.g.*, 85 Fed. Reg. 20178, 20180 (April 10, 2020). Such prior expressed limitations are superseded by the EPA’s approval of Oklahoma’s SAFETEA request.

⁴ In accordance with Executive Order 13990, EPA is currently reviewing our October 1, 2020 SAFETEA approval and is engaging in further consultation with tribal governments and discussions with the State of Oklahoma as part of this review. EPA also notes that the October 1, 2020 approval is the subject of a pending challenge in federal court. (*Pawnee v Regan*, No. 20-9635 (10th Cir.)). Pending completion of EPA’s review, EPA is proceeding with this proposed action in accordance with the October 1, 2020 approval. EPA’s final action on the approved revisions

IV. Proposed Action

We are proposing to approve under section 110 of the CAA, revisions to the Oklahoma SIP that update the definitions relied on throughout the SIP and update the incorporation by reference dates for Federal requirements. We have determined that the revisions submitted on May 15, 2020, and February 9, 2021, were developed in accordance with the CAA and EPA's regulations, policy, and guidance for SIP development.

The EPA proposes approval of the following revisions to the Oklahoma SIP adopted on May 28, 2019, effective September 15, 2019, and submitted to the EPA on May 15, 2020:

- Revisions to OAC 252:100-2-3, Incorporation by Reference,
- Repeal of OAC 252:100, Appendix Q, and
- Adoption of new OAC 252:100, Appendix Q.

The EPA proposes approval of the following revisions to the Oklahoma SIP adopted on June 25, 2020, effective September 15, 2020, and submitted to the EPA on February 9, 2021:

- Revisions to OAC 252:100-1-3, Definitions,
- Revisions to OAC 252:100-2-3, Incorporation by Reference,
- Repeal of OAC 252:100, Appendix Q, and
- Adoption of new OAC 252:100, Appendix Q.

V. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Oklahoma regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents

to the Oklahoma SIP that include revisions to OAC 252:100-1-3, 2-3, and Appendix Q will address the scope of the state's program with respect to Indian country, and may make any appropriate adjustments, based on the status of our review at that time. If EPA's final action on Oklahoma's SIP is taken before our review of the SAFETEA approval is complete, EPA may make further changes to the approval of Oklahoma's program to reflect the outcome of the SAFETEA review.

generally available electronically through www.regulations.gov (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This proposal to approve revisions to the Oklahoma SIP that update the definitions relied on throughout the SIP and update the incorporation by reference dates for Federal requirements as discussed more fully elsewhere in this document will apply, if finalized as proposed, to certain areas of Indian country as discussed in the preamble, and therefore has tribal implications as specified in EO 13175 (65 FR 67249, November 9, 2000). However, this action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the EPA has offered consultation to tribal governments that may be affected by this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 15, 2021.

David Gray,

Acting Regional Administrator, Region 6.

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